admitted, and thereby sought to bring himself within the First Amendment to the Federal Constitution, which he asserted was extended to a prohibition on the states by the Fourteenth Amendment. The power to punish for contempt is by a long line of authorities held to be inherent in courts of superior jurisdiction existing independent of statute (*Ex parte Robinson,* 19 Wall. 505), and in many jurisdictions even in spite of statute (*Hale* v. *State,* 55 Oh. St. 210; *Little* v. *State,* 90 Ind. 338, 36 L. R. A. 254); the theory being that what the legislature has not given it cannot take away. So, too, the power is very broad and ill defined, consisting at common law of any comment, whether upon a pending or concluded action tending to bring the court into disrepute (*King* v. *Almon,* 8 St. Tr. 53; *Wraynham's Case,* 2 St. Tr. 1059, 4 BL. COM. p. 285), a view still maintained in England (*Queen* v. *Gray* [1900], 2 Q. B. 36), although generally restricted in the United States either by inference from constitutional provisions or the spirit of our institutions to comments upon actions still pending. *Cheadle* v. *Ind.,* 110 Ind. 301; *Att'y Gen.* v. *Circuit Court,* 97 Wis. 1. Granted jurisdiction over the case, or the order or motion disobeyed, the court offended has exclusive power to punish for contempt, a control which no other or superior court can disturb by habeas corpus, appeal or in any other manner. II BISHOP, CRIMINAL LAW, § 268; *New Orleans* v. *New York Steamship Co.,* 20 Wall. 387; *People* v. *Nevins,* 1 Hill (N.Y.) 154; *Tolman* v. *Jones,* 114 Ill. 147; *In re Cooper,* 32 Vt. 254; *Ex parte Kearney,* 7 Wheaton. 38. Such being the nature of the power of contempt at common law, slight appeal was made to the "due process of law" clause; but Mr. Justice HARLAN, in his dissenting opinion, argued that the prohibition as to limiting the freedom of the press imposed upon Congress, created a right incident to United States citizenship, which the states could not violate, and that therefore the justification of truth in constructive contempt for publications in a newspaper was a good defense. The majority opinion held, however, that assuming the First Amendment was a prohibition on the states (a point not decided) nevertheless it only forbade previous restraints in the nature of licenses and laid no restraint on punishment after publication. Such is the rule laid down by Chief Justice PARKER in *Com.* v. *Blanding,* 3 Pick. 304; in *Republican* v. *Oswald,* 1 Dallas, 319; and adopted by Judge COOLEY; CONSTITUTIONAL LIMITATIONS, 7th ed., p. 603. The power of a court over contempt is in no wise impaired by the Federal Constitution.

CONTRACTS—ACCORD AND SATISFACTION—CONSIDERATION.—A debtor, being in failing circumstances and contemplating bankruptcy, offered a creditor 30 per cent of his debt as a settlement in full. The creditor dissuaded him from going into bankruptcy, accepted his alternative offer, received the money, and closed the account. The creditor now sues for the balance. *Held,* there was sufficient consideration to bind the creditor to the agreement. *Melroy et al.* v. *Kemmerer* (1907), — Pa. —, 67 Atl. Rep. 699.

The old common law rule is, that part payment of a debt that is already due is not a good accord and satisfaction of the whole debt because there is no consideration for the creditor's agreement to release the balance. *Cumber* v. *Wane,* 1 Strange, 426. But if there is a new and adequate consideration

such part payment is a good discharge of the whole debt (according to an early decision). *Warren* v. *Skinner,* 20 Conn. 559. The fact of the debtor's insolvency, however, was formerly held to have no effect in determining the question of consideration for "the obligation to pay was not impaired, and the moral duty remained in full force." *Pearson and Fant* v. *Thomason,* 15 Ala. 700, 50 Am. Dec. 159. More recent decisions, however, have greatly extended the meaning of the term "consideration" in order to give the old rule as little effect as possible. Thus, a part payment of the debt by a person other than the debtor, has been held to be a valid accord and satisfaction. *Pettigrew Machine Co.* v. *Harmon,* 45 Ark. 290. The mere fact that the debtor is insolvent, as in *Engbretson* v. *Seiberling,* 122 Ia. 332, 64 L. R. A. 75, 98 N. W. 319, 101 Am. St. Rep. 279, or in failing circumstances, as in *Curtiss* v. *Martin,* 20 Ill. 557, or is supposed to be insolvent though it is afterwards ascertained that he is not so actually, as in *Rice* v. *London & Northwest American Mortgage Co.,* 70 Minn. 77, 72 N. W. 826, is sufficient to except the case from the operation of the early rule. Other decisions supporting the principal case are, *Dawson* v. *Beall,* 68 Ga. 328; *Hinckley* v. *Arey,* 27 Me. 362; *Herman* v. *Schlesinger,* 114 Wis. 382, 90 N. W. 460, 91 Am. St. Rep. 922. In fact, as is said in the opinion in the principal case "a valuable consideration" has come to mean "some right, interest, or benefit to one party, or some loss, detriment, or responsibility resulting actually or potentially to the other." Thus, in this case, the consideration lay in the fact that the creditor received a sum certain instead of the chance of an uncertain dividend in bankruptcy. In business, especially when a merchant is greatly in need of ready money, there is a "difference between the right to a thing and the actual possession of it," and as conditions have changed, the "courts, so far as they could without sacrifice of the maxim of stare decisis, have brought the law into closer accord with modern business principles." *Melroy et al.* v. *Kemmerer,* supra.

CRIMINAL LAW—VENUE—STATUTES—VALIDITY.—A statute (Comp. Laws, § 11633), providing that one committing larceny in a railroad car while en route, may be prosecuted in any county through which the car passes, is *held* to violate Const. Art. VI, § 27, preserving the right of trial by jury, which means a trial by jury in the county where the alleged offense was committed. *People* v. *Brock* (1907), — Mich. —, 112 N. W. Rep. 1116.

The decision in the principal case is based on *Swart* v. *Kimball,* 43 Mich. 443, which holds that the right of trial by jury is the right to be tried by a jury in the county where the offense was committed. In *Craig* v. *State,* 50 *Tenn.* (3 Heisk.) 227, a statute similar to that of Michigan, was held unconstitutional and for the same reason. On the other hand, *Watt* v. *People,* 126 Ill. 9, 18 N. E. 340, 1 L. R. A. 403, holds a similar statute constitutional. But this case is distinguishable from the principal case in that the constitution of Illinois provides for trial in the county "in which the offense *is alleged* to be committed." In *Sterman* v. *State,* 10 Mo. 503, a similar statute was held constitutional, but in *State* v. *Anderson,* 191 Mo., 134, the court, without referring in any way to the previous decision, held such a statute unconstitutional. In other states, convictions on such statutes have been upheld, but the